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2  
3 **UNITED STATES DISTRICT COURT**

4 **DISTRICT OF NEVADA**

5 \* \* \*

6 Steven L. Scott,

Case No. 2:17-cv-00702-JAD-BNW

7 Plaintiff,

8 **ORDER re ECF No. 137**

v.

9 James Cox, *et al.*,

10 Defendants.

11  
12 Plaintiff filed a Motion to Compel Discovery. ECF 137. Defendants opposed this motion.  
13 ECF No. 141. The Court held a hearing on January 14, 2022.

14 **I. The motion was timely filed.**

15 Plaintiff's motion requests Fed. R. Civ. P. 26(a) disclosures as well as several Requests  
16 for Production ("RFP's) from Defendants. Although Plaintiff's motion was filed on April 23,  
17 2020, it was not docketed until January 3, 2022. This was an oversight by the Clerk's Office. At  
18 the time that Plaintiff intended to file it, the Scheduling Order provided that the close of discovery  
19 would be September 8, 2020. Thus, the request is timely.

20 **II. The Court has jurisdiction.**

21 Defendants argue that all defendants to whom the RFPs refer have since been dismissed  
22 from the case per the District Court's Summary Judgment Order. ECF No. 123. Thus, they argue  
23 that this Court has no jurisdiction over those defendants.

24 Defendants are correct in noting that much has happened since Plaintiff intended to file  
25 this motion to compel. The District Court entered an order granting in part and denying in part  
26 Defendants' motion to dismiss. ECF No. 45. It also entered an order on Defendants' motion for  
27 summary judgment dismissing certain defendants from the case. ECF No. 123. Nevertheless, the  
28 Court needs to evaluate the motion as if it had been properly docketed, which would have been

1 after the order on the motion to dismiss but before the order on summary judgment. In addition,  
 2 not *all* defendants who were named in the First and Second Amended Complaint have been  
 3 dismissed. The defendants who have been dismissed from the case are Defendants Clark-Carrillo,  
 4 Garcia, Gutierrez, Lambey, and Williams. ECF No. 124.<sup>1</sup>

5 **III. Requests that remain at issue**

6 Plaintiff propounded eight requests for production. During the hearing, however, Plaintiff  
 7 indicated he was only standing by requests numbers 4 and 8 and waiving the rest. Defendants'  
 8 response to the requests was that they were not addressed toward a specific defendant and that  
 9 they are not in possession, custody, or control of the requested discovery.<sup>2</sup>

10 Discovery is broad. *Jackson v. Montgomery Ward & Co.*, 173 F.R.D. 524, 528 (D. Nev.  
 11 1997). Parties may obtain discovery on any nonprivileged matter (a) relevant to any party's claim  
 12 or defense and (b) proportional to the needs of the case. Fed. R. Civ. P. 26(b)(1). Relevance under  
 13 Rule 26(b)(1) is also broad. *See, e.g., Burke v. Basil*, No. 820CV00635JVSJDEX, 2021 WL  
 14 3265022, at \*1 (C.D. Cal. May 28, 2021). The Federal Rules of Civil Procedure were amended in  
 15 2015 to clarify that the scope of permissible discovery "is no longer information that is  
 16 'reasonably calculated to lead to the discovery of admissible evidence.'" *Mfg. Automation  
 17 Software Sys., Inc. v. Hughes*, No. CV 16-8962-CAS (KSX), 2017 WL 5641120, at \*3 (C.D. Cal.  
 18 Sept. 21, 2017) (citation omitted). Instead, "[t]he test going forward is whether" the sought  
 19 discovery "is relevant to any party's claim or defense." *In re Bard IVC Filters Prod. Liab. Litig.*,  
 20 317 F.R.D. 562, 564 (D. Ariz. 2016). The trial court has "broad discretion in determining  
 21 relevancy for discovery purposes." *Surfivor Media, Inc. v. Survivor Prods.*, 406 F.3d 625, 635  
 22 (9th Cir. 2005) (citation omitted).

23 To determine whether discovery is proportional, the court considers "the importance of  
 24 the issues at stake in the action, the amount in controversy, the parties' relative access to relevant  
 25 information, the parties' resources, the importance of the discovery in resolving the issues, and

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26 <sup>1</sup> The Court has evaluated whether these requests, if granted, would have had an impact on the order on  
 27 summary judgment.

28 <sup>2</sup> At the hearing, it became clear that Defendants may be in possession, custody, and control of the requests  
 in question.

1 whether the burden or expense of the proposed discovery outweighs its likely benefit.” Fed. R.  
 2 Civ. P. 26(b)(1). Information need not be admissible in evidence to be discoverable. *Id.*

3 When a party fails to provide requested discovery, the requesting party may move for an  
 4 order compelling discovery. Fed. R. Civ. P. 37(a)(1). “When the discovery sought appears  
 5 relevant on its face, the party resisting discovery bears the burden of establishing the lack of  
 6 relevance . . .” *Krause v. Nevada Mut. Ins. Co.*, No. 2:12-CV-00342-JCM, 2014 WL 496936, at  
 7 \*3 (D. Nev. Feb. 6, 2014), *aff’d*, No. 2:12-CV-342 JCM CWH, 2014 WL 3592655 (D. Nev. July  
 8 21, 2014) (internal quotation marks and citation omitted). Conversely, if the relevance of the  
 9 discovery sought is not apparent, then the party seeking discovery bears the burden of  
 10 establishing the relevance of the request. *Id.* Once the relevance hurdle is cleared, the party  
 11 seeking to avoid discovery bears the burden of explaining why discovery should be denied. *Id.*  
 12 (citation omitted).

13 The court has broad discretion to permit or deny discovery, and its decision will not be  
 14 disturbed “except upon the clearest showing” that the denial “results in actual and substantial  
 15 prejudice to the complaining litigant.” *Hallett v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002)  
 16 (internal quotation marks and citations omitted). In 1998, the Supreme Court wrote that “Rule 26  
 17 vests the trial judge with broad discretion to tailor discovery narrowly and to dictate the sequence  
 18 of discovery.” *Crawford-El v. Britton*, 523 U.S. 574, 598 (1998). The Supreme Court recognized  
 19 that under Fed. R. Civ. P. 26(b)(2), the trial court may, on its own motion, limit the frequency or  
 20 extent of use of discovery methods if it determines the burden or expense of proposed discovery  
 21 outweighs its likely benefits. *Id.* at 598–99. Fed. R. Civ. P. 26(c) gives the trial court authority on  
 22 motion, or on its own initiative, to limit the time, place, and manner of discovery, or bar  
 23 discovery altogether on certain subjects, as required “to protect a party or person from annoyance,  
 24 embarrassment, oppression, or undue burden or expense.” *Id.* at 599.

25 **A. RFP No. 4**

26 As made clear during the hearing, Defendants can procure these documents. The Court  
 27 will grant the request only as it concerns Plaintiff’s medical records from January 2014 until  
 28 discharged. The granting of this request should not impact the District Court’s order on

1 Defendants' motion for summary judgment as the court had previously dismissed the Eighth  
2 Amendment claims that preceded 2018 on *res judicata* grounds (and not on the basis of any  
3 evidentiary deficiency). ECF No. 45 at 13.

4 **B. RFP No. 8**

5 As made clear during the hearing, Defendants have the ability to procure these documents.  
6 The Court will grant the request only as it concerns the common fare applications of those  
7 belonging to the Jewish and Muslim faiths from January 2014 to December 2018 at the Southern  
8 Desert Correctional Center. The granting of this request should not impact the District Court's  
9 order on Defendants' motion for summary judgment as the court had previously dismissed the  
10 Eighth Amendment claims that preceded 2018 on *res judicata* grounds (and not based on any  
11 evidentiary deficiency). ECF No. 45 at 13.

12 **IV. Sanctions**

13 Sanctions against Defendants under Fed. R. Civ. P. 37(a)(5)(B) would not be proper as  
14 their responses were substantially justified.

15 **V. Conclusion**

16 **IT IS ORDERED** that Plaintiff's motion to compel at ECF No. 137 is GRANTED in part  
17 and DENIED in part consistent with this Order.

18 **IT IS FURTHER ORDERED** that Defendants must provide discovery responsive to  
19 RFP Nos. 4 and 8 within 30 days from the date of this Order.

20  
21 DATED: January 16, 2022.

22   
23 BRENDAG WEKSLER  
24 UNITED STATES MAGISTRATE JUDGE  
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